Before the Federal Communications Commission Washington, D.C. 20554

In the matter of)
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Application of Cellco Partnership d/b/a) WT Docket No. 12-4
Verizon Wireless and SpectrumCo LLC	
for Consent to Assign Licenses)
Application of Cellco Partnership d/b/a)
)
Verizon Wireless and Cox TMI Wireless,)
LLC for Consent to Assign Licenses)

COMMENTS OF PUBLIC KNOWLEDGE

In response to the Public Notice issued on June 26,¹ Public Knowledge submits the following comments on how the proposed transfer of licenses by Verizon Wireless to T-Mobile (VZ/T-Mobile)² impacts the public interest analysis with regard to the above captioned transaction. While the VZ/T-Mobile transaction does address concerns Public Knowledge has previously expressed with regard to the problem of spectrum concentration created by this transaction, it does nothing to address the issues relating to the Joint Operating Entity (JOE) and the joint marketing agreements (JMAs), which are intrinsically linked to the proposed license transfers at issue in this proceeding.

If the JOE and JMAs were rescinded, however, and the Commission required Verizon Wireless to honor its commitment to sell its Lower 700 MHz A&B block

¹ See Wireless Telecommunications Bureau Seeks Comment on the Impact on the Verizon Wireless-SpectrumCo and Verizon Wireless-Cox Transactions of the Applications of Verizon Wireless and T-Mobile to Assign AWS-1 Licenses, WT Docket No. 12-4, Public Notice (June 26, 2012).

² See Public Interest Statement, attached to Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo, LLC, and T-Mobile License LLC for Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 12-175, ULS File No. 0005272585.

licenses, the proposed set of transactions would result in an overall enhancement of spectrum efficiency for both Verizon Wireless and T-Mobile. Depending on the outcome of the Lower 700 MHz A&B block sales, the net result could potentially alleviate spectrum access issues among several regional providers.³ But even these benefits cannot offset the anti-competitive impact of the JOE and JMAs on the wireless industry and on the telecommunications industry as a whole.

Public Knowledge also believes that the remedies PK proposed in its Petition to Deny with regard to the spectrum concentration issues, *i.e.*, a data roaming condition, acceleration of AWS build out requirements, and a "use it or share it" condition in the event Verizon fails to meet these build-out requirements, remain necessary.⁴ These conditions will maintain an adequate level of competition, despite Verizon's overwhelming network advantage post-transaction, and ensure that rural Americans also enjoy the benefits of Verizon's advanced LTE network.⁵

I. The Verizon/T-Mobile Spectrum Transfers Do Not Address the Anticompetitive Consequences of the Proposed Spectrum Transfers.

When examining the proposed license transfers between Verizon Wireless and T-Mobile, the Commission should keep in mind what the transfers do *not* do. The transfers do not resolve the anticompetitive concerns raised by the Applicants' agency, reseller, and Joint Operating Entity agreements. Public Knowledge has consistently warned of the

³ See Comments of Public Knowledge, WT Docket No. 12-175 (July 10, 2012).

⁴ See Petition to Deny of Public Knowledge et al., WT Docket No. 12-4 (Feb. 21, 2012), at 45-53 ("Petition to Deny").

⁵ PK has recommended these same conditions be extended to T-Mobile as well, for similar reasons. *See* Comments of Public Knowledge, WT Docket No. 12-175 (July 10, 2012).

anticompetitive effects of the commercial agreements,⁶ and while the VZ/T-Mobile transactions may alleviate some of the spectrum concentration concerns posed by the proposed transactions in this proceeding, they do nothing to prevent or remedy the harms threatened by the proposed transactions to the development of competition in the telecommunications landscape.

As the attached paper more fully explains, the commercial agreements are thoroughly intertwined with each other and will be used to stifle competition in the wireline and wireless markets, from third parties and from the Applicants themselves. The VZ/T-Mobile license transfers may ultimately benefit competition among wireless carriers using licensed spectrum, but they will do nothing, for example, to prevent the Applicants' commercial agreements from stifling wireless competition that uses WiFi offload technologies.

The Applicants' agreements operate together to [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

This will cripple the development and usefulness of WiFi networks to systematically manage congestion on mobile networks. Absent the agreements at issue, the cable operators would presumably be willing to enter into WiFi offload agreements with

⁶ See Petition to Deny at 19-29; Reply Comments of Public Knowledge et al., WT Docket NO. 12-4 (Mar. 26, 2012) at 6-24.

⁷ See The Anticompetitive Effects of the Verizon/SpectrumCo Agreements, Public Knowledge (June 2012).

wireless carriers like Pioneer,⁸ or to partner with companies like Netflix that may be interested in pursuing new avenues to transmit their services to consumers.

However, the commercial agreements [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

¹⁰ [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

⁸ Other wireless carriers, such as T-Mobile, Sprint, and AT&T, have also shown interest in utilizing WiFi offload for wireless backhaul. *See* Letter from David H. Pawlik, Counsel to Sprint Nextel Corporation, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 12-4 (May 25, 2012); Mike Dano, *T-Mobile USA Offloads 5M Wi-Fi Callers*, FIERCE WIRELESS (Feb. 16, 2011); Maisie Ramsay, *AT&T Ups the Ante on Android WiFi Offload*, CED MAGAZINE (Oct. 3, 2011); Phil Goldstein, *AT&T Expands WiFi Offload Project*, FIERCE WIRELESS (July 26, 2010).

⁹ [BEGIN HIGHLY CONFIDENTIAL]

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But whether the cable operators [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL] Verizon Wireless benefits from decreased competition. If the cable operators become MVNOs, [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY

CONFIDENTIAL]

11 [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL]

¹² [BEGIN HIGHLY CONFIDENTIAL]

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As a result, whichever way the agreements are executed, Verizon Wireless would be able to significantly hinder its direct competitors' strategies to use WiFi technology to expand their market offerings and [BEGIN HIGHLY CONFIDENTIAL]

[END HIGHLY CONFIDENTIAL] The proposed VZ/T-Mobile license transfers would do nothing to solve this problem and protect nascent competing technologies from being stifled by the commercial agreements.

II. Data Roaming, Build-Out, and "Use It Or Share It" Conditions Remain Necessary In This Proceeding.

Even if Verizon Wireless trades some of its spectrum licenses with T-Mobile, the license conditions that Public Knowledge has supported in past filings in this proceeding remain relevant and necessary to protect competition in the wireless space.¹⁴

Indeed, a data roaming obligation will only become more important as Verizon amasses more spectrum holdings. It is important to remember that the proposed transfers will give Verizon a much stronger network of spectrum holdings even if some of the licenses it obtains from SpectrumCo may eventually be transferred to T-Mobile. Verizon's larger, more rationalized spectrum network will decrease its need to ever enter into data roaming agreements on another carrier's network, which will decrease its incentive to open its network for roaming to other carriers, even at reasonable rates. ¹⁵

Similarly, a "use it or share it" condition, particularly when paired with ambitious build-out schedules, will continue to ensure that Verizon uses its newly acquired spectrum while permitting unlicensed uses at no cost to Verizon if Verizon fails to meet

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¹⁴ See Petition to Deny at 45-53.

¹⁵ *Id.* at 48.

its build-out deadlines.¹⁶ Finally, equipment interoperability will only become more important as Verizon achieves a larger, more sophisticated network and therefore acquires greater leverage over device manufacturers.¹⁷

For these reasons, the Commission should still impose the conditions that Public Knowledge supported in its Petition to Deny to ensure the efficient use of spectrum and vibrant competition in the wireless market.

CONCLUSION

For these reasons, Public Knowledge urges the Commission to block the commercial agreements and impose conditions upon the proposed license transfers to ensure that the transactions serve the public interest, even in light of the proposed Verizon/T-Mobile license transfers.

Respectfully submitted,

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¹⁶ *Id.* at 49-52. *See*, *e.g.*, Letter from Harold Feld, Senior Vice President, Public Knowledge, to Marlene Dortch, Secretary, FCC, WT Docket No. 12-4 (June 18, 2012).

¹⁷ Petition to Deny at 53.